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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/603,834	06/26/2000	Michael Kraus	39727/DBP/E43	2410

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EXAMINER

OROPEZA, FRANCES P

ART UNIT PAPER NUMBER

3762

DATE MAILED: 08/29/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/603,834

Applicant(s)

KRAUS ET AL.

Examiner

Frances P. Oropeza

Art Unit

3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 August 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Response to Response after Final Action received 9/18/02***

1. The corrected drawing for figure 7 has been entered into the record. Copies of the Information Disclosure Statements faxed by the Applicant have been entered in to the record.

In a final search of the prior art, a pertinent reference was found. The Applicant's arguments with respect to claims 1-21 have been considered but are moot in view of the new ground(s) of rejection.

***Claim Rejections - 35 USC § 102***

2. Claims 1-3, 6, 7, 16, and 19-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Nappholz et al. (US 5113869). Nappholz et al. disclose an implantable ambulatory monitor. The telemetry receiver/transmitter performs two-way, digital telemetry to transfer data and programs between the implant and an external device. (c 16, ll 25-27). The microprocessor of the implant triggers communication with an external device using a beacon signal indicating the reception readiness of the implant, and uses two intervals to control the receiving portion of the implant receiver/transmitter (c 16, l 61 – c 17, l 6). The reception readiness of the implant is controlled by the synchronization sequence, read as “at least one first item”, sent by the external device (c 17, ll 13-47). The external receiver/transmitter is substantially permanently ready for data exchange (c 17, ll 22-25). The implant initiates communications with an external device to provide a warning about abnormal conditions or about implant malfunction (c 16, ll 34-44). Data communications can be initiated by the implant (c 21, ll 31-43).

***Claim Rejections - 35 USC § 103***

3. Claims 4, 8-15 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nappholz et al. (US 5113869) in view of de Coriolis (EPO 0607638). As discussed in paragraph 2 of this action, Nappholz et al. discloses the claimed invention except for:

- the triggering signal including a first data set (claim 4),
- implementing a first plausibility check (claim 8),
- implementing renewed transmissions if the power supply is not exceeded (claim 9),
- checking the data (claim 10),
- sending a second acknowledgement (claim 11),
- implementing a second plausibility check (claim 12),
- effecting a new transmission when a defective transmission is established (claim 13),
- effecting renewed transmission after expiry of a waiting time period (claim 14),
- after renewal of the transmission, repeating the method steps (claim 15), and
- upon non-reception of transmissions, prolonging the transmission (claim 17).

de Coriolis discloses a telemetry system for an implantable device and teaches the specifics of the signal modulation and system component interaction to enable signal transmission as discussed in paragraph 7 of Office Action, Paper No. 6. Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the implantable ambulatory monitor as taught by Nappholz et al., with the specifics of the signal modulation and system component interaction to enable signal transmission as taught by de Coriolis so a known and proven means of signal modulation and system component

interaction is adopted to enable data transfer between the implanted device and the remote external unit so the patient's condition can be evaluate the patient's care optimized.

4. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nappholz et al. (US 5113869) in view of Fountain et al. (US 4625730). As discussed in paragraph 2 of this action, Nappholz et al. discloses the claimed invention except for the triggering signal being initiated by the wearer.

Fountain et al. disclose an ECG recording controller and teach that it is known to provide a manual means for initiating a triggering pulse to begin a transmission when the patient perceives an emergency situation (abstract and c 6, starting at l 23). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the implantable ambulatory monitor as taught by Nappholz et al., with the manually initiated emergency signal as taught by Fountain et al. to provide a system with a means that enables the patient to get help when he perceives help is needed.

5. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nappholz et al. (US 5113869) in view of Wyborny et al. (US 5354319). As discussed in paragraph 2 of this action, modified Nappholz et al. discloses the claimed invention except for the intervals varying in length.

Wyborney et al. disclose a telemetry system and teach that it is known to use variable interval lengths (c 5, ll 53-58). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the implantable ambulatory monitor as taught by Nappholz et al., with the variable interval lengths as taught by Wybroney et al. to compress the frame length so more data can be transmitted in a fixed time.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fran Oropeza whose telephone number is (703) 605-4355. The examiner can normally be reached on Monday – Thursday from 6 a.m. to 4:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela D. Sykes can be reached on (703) 308-5181. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 306-4520 for regular communication and (703) 306-4520 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

Frances P. Oropeza  
Patent Examiner  
Art Unit 3762

*FPO*  
*8/24/02*

*[Signature]*  
JEFFREY R. JASTRZAB  
PRIMARY EXAMINER  
*3762*  
*8/25/02*